STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 22, 2011
v	No. 301047 Ottawa Circuit Court
DIANA SKINNER, Defendant-Appellant.	LC No. 10-034472-FH

Before: HOEKSTRA, P.J., and K.F. KELLY and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction for operating a motor vehicle while under the influence and/or operating a motor vehicle with an unlawful bodily alcohol level, third offense, MCL 257.625(1). We affirm.

I. BASIC FACTS

Carl Slenk was stopped at a four-way stop sign waiting for his turn to proceed through the intersection when his vehicle was bumped from behind by defendant's vehicle. Slenk walked to the driver's side of defendant's vehicle and asked her whether she realized that her vehicle hit his vehicle. Defendant appeared to be confused and just stated, "I have a child in the car." Slenk observed a child who was approximately two years old in the front seat. The child was not in a car seat nor restrained by a seat belt. Slenk told defendant that they should move off of the road to allow traffic to pass, and pulled his vehicle into a nearby parking lot. Instead of stopping, defendant left the scene. Slenk followed defendant less than one mile to her house and called 911. Police arrived within three minutes.

Defendant did not immediately answer the officers' knocks on her front door. She eventually stuck her head out of an upstairs window and called down that she was changing a baby's diaper. The officers testified that defendant appeared confused and that her answers about the accident were vague. Her speech was thick-tongued and a little difficult to understand. The officers did not smell alcohol on her or see any alcohol containers. Defendant told the officers that she got out of work at 3:30 p.m., went with coworkers to the Village Inn Pizza Parlor where she drank five Peppermint Schnapps, and then picked up her daughter from daycare. Defendant told the officers that she thought that Slenk's vehicle backed up into her. Defendant's breath test was a .24.

Defendant testified that after leaving work at approximately 3:30 p.m., she picked up her daughter from daycare, went to McDonald's to get her daughter food, and then stopped by her husband's work to see him. After leaving her husband's work, her daughter, who was in a car seat in the backseat, climbed out of the car seat, then climbed into the front seat. Defendant was trying to hold her daughter in the front seat when she accidentally bumped the vehicle in front of her. Slenk was yelling at her at the scene and defendant did not want to expose her daughter to that so she drove the short distance home in order to call the police. Slenk approached her in the driveway and started yelling at her again, so defendant took the child inside. Defendant changed her daughter's diaper and proceeded to drink 15 ounces of her husband's rum. She did not immediately respond to the knocks at the door because she believed it was Slenk. Because the officers sarcastically asked her where she had been before the accident, she sarcastically responded that she had been out drinking with coworkers at the Village Inn Pizza Parlor, but that was not true. Defendant testified that she did not drink any alcohol before she drove her automobile.

II. MOTION FOR MISTRIAL

Defendant argues that the trial court erred in denying her motion for a mistrial because the jury was informed that defendant was previously in a driving accident involving alcohol and because the prosecutor referred to defendant's participation in a court-sponsored treatment program. We disagree. We review the denial of a motion for a mistrial for an abuse of discretion. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant . . . and impairs his ability to get a fair trial." *Id*. (citation omitted).

At trial, the prosecutor questioned defendant, "Have you ever consumed large quantities of alcohol and driven a vehicle?" Defendant replied, "No, sir." Defense counsel requested a bench conference. The trial court excused the jury to allow the prosecutor to make an offer of proof. The prosecutor subsequently asked defendant the following questions *outside the presence of the jury*:

> *Q.* Ms. Skinner, isn't it true that in 2006 you were involved in a car accident?
>
> *A.* Yes.
>
> * * *
>
> *Q.* And at that time wasn't – isn't it true that your body alcohol content was in the range of .35 to .43?
>
> *A.* Yes.

Defense counsel argued that the prosecutor was impermissibly trying to bring into evidence defendant's previous criminal record; whereas the prosecutor argued that the evidence was relevant to show that defendant was capable of consuming large quantities of alcohol. Because defendant's demeanor following the accident was at issue, the trial court determined that it was

proper for the defendant to be questioned about her previous "alcohol use and consumption to explain why a person who had a .24 alcohol level was able to function in an apparently normal way." The trial court ruled that the prosecutor could inquire into defendant's drinking habits, but to the extent that "it allows the jury to conclude that she has previously been convicted of drunk driving or engaged in drunk driving, I think its prejudicial effect outweighs its probative value." Thus, the fact that defendant was previously involved in a car accident where she had been drinking alcohol was not testimony presented to the jury and no error occurred warranting reversal.

Defendant also argues that a reasonable jury could infer that defendant participated in a court-sponsored treatment program and thus had previous drunk driving convictions. Defendant's husband, Scott Skinner, testified that defendant came to his work at approximately 4:40 p.m. on the day of the accident and that she did not smell like alcohol. Skinner also testified that he knew that defendant drank his bottle of rum because he found the empty bottle upstairs in the garbage. Skinner denied that defendant was dependent on alcohol, causing the prosecutor to question Skinner:

> *Q.* Were you with your wife when she was going through a support program to learn how to deal with alcohol issues?
>
> *A.* She was in a program.
>
> *Q.* And that was to help teach her how to deal with alcohol?
>
> *A.* That's possible. She was in a program.
>
> *Q.* Is that possible, or is that the truth?
>
> *A.* I'm not sure what the program was.
>
> *Q.* Mr. Skinner, you work at a--at a place where they sell used furniture from hotels?
>
> *A.* That's correct.
>
> *Q.* Isn't it true that approximately a year ago you and I met in that store?
>
> *A.* I'm not for sure.
>
> *Q.* Isn't it true you thanked me that she was a part of that program?
>
> *A.* Yes, it—yes, I did.
>
> MR. BARRIX [*defense counsel*]. You Honor, may we approach?
>
> THE COURT. Are you going to go further with this?
>
> MR. BUNCE [*the prosecutor*]. No, Your Honor.

THE COURT. All right.

Defense counsel later moved for a mistrial arguing that, throughout the trial, the prosecutor continually made references to defendant's prior drunk driving convictions, thereby depriving defendant of a fair trial. The trial court agreed that the prosecutor's question to Skinner regarding the sobriety program could lead "an astute juror" to assume "that somehow the Defendant was previously charged with another crime," but, "I really don't think it's the kind of error, if any, that would require a mistrial."

As observed by the trial court, the isolated, brief testimony was not so egregious as to warrant a mistrial. There was a single question placed by the prosecutor to defendant's husband as to whether he remembered thanking the prosecutor for defendant being part of a support program to deal with alcohol. That line of questioning was immediately stopped and no further questions relating to that program, or why the prosecutor was involved in defendant being in it, were asked. The prosecutor did not later emphasize this testimony. Moreover, the trial court provided a curative instruction to the jury:

> There is evidence that the defendant has been convicted of a crime in the past. You may consider this evidence only in deciding whether you believe the Defendant is a truthful person. You may not use it for any other purpose. A past conviction is not evidence that the Defendant committed the alleged crime in this case.

"Curative instructions are sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements and jurors are presumed to follow their instructions." *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008) (citations omitted). Based on the foregoing, any error did not prejudice the rights of defendant and impair her right to a fair trial. Accordingly, the trial court did not abuse its discretion by denying defendant's motion for a mistrial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering